

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

CIVIL ACTION FILE NO.: 7:19-cv-89-BO

NEIGHBORHOOD NETWORKS)
PUBLISHING, LLC and N2)
FRANCHISING, LLC,)
Plaintiffs,)
v.)
JACQUELINE MARIE LYLES and)
LIFESTYLE PUBLICATIONS, LLC,)
Defendants.)

**DECLARATION OF
MIKE BEAMS**

Mike Beams, pursuant to 28 U.S.C. § 1746 hereby declares as follows:

1. I am over 18 years of age, and I suffer from no mental disability.

I am competent to testify concerning the matters stated herein, and the statements contained in this Affidavit are based upon my personal knowledge, except as to those matters stated on information and belief, which I believe to be true.

2. I am a senior leader and Chief Technology Officer (“CTO”) of The N2 Company f/k/a Neighborhood Networks Publishing, Inc. (the “Company”), and in that capacity, I am familiar with, and have access to, the various electronic systems that the Company, and its affiliate N2 Franchising, Inc (collectively with The N2 Company, “N2”), use to conduct business, including the “N2 Portal” and “PubManager”. By virtue of my duties and responsibilities, I am further familiar with the manner in which these electronic systems create, maintain, and record electronic information.

3. In her capacity as an N2 Area Director and franchisee, Jackie Lyles (“Lyles”) had access to both the N2 Portal and PubManager using unique login names and secure passwords, and would use both systems in the ordinary course of business.

4. The N2 Portal is the cloud-based software system that Area Directors use to, among other purposes, enter, process and manage customer advertising contracts and orders.

5. The customer data gathered and stored by N2 in the Portal (“Customer Data”) is proprietary, confidential, and commercially valuable.

6. N2’s Customer Data includes, in pertinent part, expiration dates of N2’s advertising agreements with customers, contract pricing, agreement terms/duration, and other information relevant to customer contract renewals (collectively “Customer Renewal Information”).

7. Customer Renewal Information is vital business information to N2 and provides a significant competitive advantage because N2’s advertising agreements are typically for terms of 12, 24, or 36 months, are usually not cancelled during their term, and the period surrounding an agreement’s expiration date provides the greatest opportunity to secure a new advertising agreement with the advertiser.

8. N2’s Customer Data and Customer Renewal Information is not generally known or readily ascertainable through independent development or reverse engineering by N2’s competitors, and is not known outside of N2’s business.

9. N2’s Customer Renewal Information is the result of investing significant money, time and human capital developing N2’s Portal to securely store the information, and constitutes a compilation of detailed records gathered and maintained over 12 years since the Portal was developed and launched.

10. Because N2’s Customer Renewal Information is not readily ascertainable outside of N2’s Portal, a competitor’s access and use of such information would provide an unfair competitive advantage that the competitor would not otherwise have but for N2’s investment in and maintenance of such information. For instance, by knowing the expiration date of specific agreements, a competitor could zero in on those advertisers that are ripe for renewal. Without the benefit of Customer Renewal Information, a competitor would only be able to

ascertain what advertisers are in which N2 publications, but have no way of knowing the remaining term on N2's advertising agreement or price.

11. Given the commercial and competitive value of its Customer Data and Customer Renewal Information, N2 takes reasonable efforts to maintain its secrecy. More specifically, the N2 Portal can only be accessed by using unique login names and secure passwords, which is a commercially reasonable and standard means of securing cloud-based software systems.

12. Additionally, N2's Area Directors are not issued login credentials or otherwise allowed to access N2's Portal or PubManager without first signing and returning their Franchise Agreement, which includes a confidentiality provision.

13. Jackie Lyles was not issued login credentials or otherwise allowed to access N2's Portal or PubManager without first signing and returning her Franchise Agreement, which includes a confidentiality provision.

14. As N2's CTO, I have administrator access to the Portal and PubManager. Both systems of record create, *inter alia*, server logs that enable my team to identify and track activity within the systems on a per user basis, as well as the date and time of specific user activity.¹

15. Ms. Lyles had access to both the Portal and PubManager at all times relevant hereto until N2 terminated her access on 27 March 2019. N2 immediately terminated her access to both systems on or about 27 March 2019 after discovering that she still inadvertently had access despite no longer working with N2 in any capacity.

16. Regarding revoking access to the Portal and PubManager, the standard procedure is for N2's technology team, which I lead, to terminate access to

¹ Server logs generate massive amounts of data that N2 cannot reasonably store on its own servers in a cost-effective manner. In March 2019 and all times relevant hereto, N2 was only able to maintain a week's worth of sever log data, which would then be automatically overwritten on a weekly basis to create space for newly generated data. As a result of the above-captioned action, my team discovered a solution that now allows N2 to store data associated with server logs with a third-party cloud service provider for longer periods of time and in a cost-effective manner.

N2's electronic systems upon the expiration or termination of the Area Director's relevant franchise agreement.

17. Regarding Ms. Lyles's access to the Portal and PubManager, the Transfer and Consent Agreement attached to N2's Complaint in the above-captioned action shows that she ceased being an N2 franchisee and Area Director on or about 31 August 2018.

18. Ordinarily, an N2 contract specialist responsible for managing documents associated with the transfer of an N2 franchise will notify my team of the transfer and termination of the applicable franchise agreement, and my team will timely terminate the Area Director's access to N2's electronic systems, including the N2 Portal and PubManager.

19. In the case of Ms. Lyles, though, I understand that she agreed to help the new N2 franchisee, Craig O'Neal, operate the relevant N2 publication, *Peachtree Battle Living*, during a period of post-transfer transition between September 2018 and November 2018. Accordingly, N2 did not terminate Ms. Lyles's access to N2Portal and PubManager upon the termination of her Franchise Agreement so that she could help operate the publication during the period of transition.

20. Neither Ms. Lyles nor Mr. O'Neal notified N2 when Ms. Lyles stopped assisting *Peachtree Battle Living* following November 2018. Consequently, Ms. Lyles login credentials and password to N2 Portal and PubManager remained active unbeknownst to N2 and my team.

21. Any and all use of N2 Portal and PubManager by Ms. Lyles after she ceased working with N2's *Peachtree Battle Living* in November 2018 as part of her transition agreement was unauthorized without N2's permission. Based on the terms of her Franchise Agreement and its confidentiality provision, Ms. Lyles knew that she could not make use of N2's systems without permission and for reasons unrelated to operating *Peachtree Battle Living*. She also knew or should have known that she could not use N2's systems while working to sell advertising on behalf of an N2 competitor like Lifestyle Publications.

22. A review of Ms. Lyles's date-stamped activity within the Portal between the period of 22 March 2019 and 26 March 2019, shows that she accessed the client details and advertising lists for 12 N2 customers as follows:

- a. American Leather (d/b/a Verde Home) – 145459 Fri, Mar 22, 09:26:03 PM
- b. Sugar Bert Boxing – 148711 Fri, Mar 22, 09:26:51 PM
- c. ATL Trash Can Valet – 137275 Fri, Mar 22, 09:27:03 PM
- d. Epps Aviation – 131837 Fri, Mar 22, 09:27:17 PM
- e. Northwest ENT and Allergy Center – 86883 Fri, Mar 22, 09:27:30 PM
- f. S & S Rug Cleaners – 88468 Fri, Mar 22, 09:27:45 PM
- g. Seagraves Plumbing – 59629 Mon, Mar 25, 06:15:47 PM
- h. Chemistry Agency – 51647 Mon, Mar 25, 06:16:27 PM
- i. ATL Trash Can Valet – 137275 (2nd time) Mon, Mar 25, 06:16:49 PM
- j. Atlanta Finest Floors LLC – 144947 Mon, Mar 25, 06:17:08 PM
- k. Smiles on Peachtree – 117289 Mon, Mar 25, 06:18:07 PM
- l. Hennessy Land Rover & Jaguar - 88620 Mon, Mar 25, 06:18:27 PM

23. In accessing client details, Ms. Lyles would have necessarily seen or be able to see, *inter alia*, Customer Data and Customer Renewal Information, including contract expiration dates and customer pricing.

24. A review of Ms. Lyles's date-stamped activity within the Portal between the period of 22 March 2019 and 26 March 2019 also shows that she accessed the index multiple times.

25. The Portal's activity log for that same period also shows that Ms. Lyles looked at the list of *Peachtree Battle Living* advertisers with unpaid accounts at that time for the months of January, February, March, and April 2019.

26. The second electronic system relevant to the above-captioned action is the Company's "PubManager", which is the software system that Area Directors use, among other reasons, to upload and manage files containing articles and customer advertisements for publication in N2's magazines.

27. Ms. Lyles's activity within PubManager between the period of 20 March 2019 and 25 March 2019 is shown on Exhibit A attached here.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 25, 2020.

Mike Beams
Mike Beams (Jun 25, 2020 08:12 EDT)
MIKE BEAMS

Exhibit A
To
Declaration of Mike Beams

Publication Job Reference IDs

52072 - March 2019 - GA_Atlanta Buckhead - Around the Park - AD Ricky Richardson
52075 - April 2019 - GA_Atlanta Buckhead - Around the Park - AD Ricky Richardson
68216 - April 2019 - GA_Peachtree - Peachtree Battle Living – AD Craig O’Neal
76527 - May 2019 - GA_Peachtree - Peachtree Battle Living - AD Craig O’Neal
70108 - March 2019 - GA_Woodstock - On the River - AD Sherry Mongesku

3/20 7:24 AM
Search for "GA_Atlanta Buckhead"
Visit pub job 52072

3/21 7:22 AM
Search for "GA_Atlanta Buckhead"
Visit pub job 52072

3/21 8:21 PM
Search for "GA_Atlanta Buckhead"
Visit pub job 52072

3/22 7:32 AM
Search for "GA_Atlanta Buckhead"
Visit pub job 52072

3/22 12:16 PM
Search for "GA_Atlanta Buckhead"
Visit pub job 52072

3/22 6:11 PM
Search for "GA_Atlanta Buckhead"
Visit pub job 52072

3/22 9:23 PM
Search for "GA_Atlanta Buckhead"
Visit pub job list view
Visit pub job 52075
Visit pub job 68216
Visit pub job list view
Pick May 2019 from date picker
Visit pub job 76527

Visit pub job May 2019 list view
Visit pub job 76527

3/22 10:34 PM
Search for "GA_Atlanta Buckhead"
Visit pub job 52072

3/23 10:20 PM
Search for "GA_Atlanta Buckhead"
Visit pub job 52072
Visit ad job 458310 Buckhead Tire and Auto Repair
Visit ad job 444273 Mercedes Benz of Buckhead
Visit ad job 458976 Sculpted Contours Luxury Medical Aeshetics
Visit ad job 444273 (3 times this time) Mercedes Benz of Buck Head

3/24 3:26 PM
Search for "ga buckhead"
Visit pub job 52072

3/24 3:28 PM
Search for "on the river"
Visit pub job 70108

3/24 3:28 PM
Search for "on the river"
Visit pub job 70108

3/24 3:28 PM
Search for "on the river"
Visit pub job 70108

Search for "ga buckhead"
Visit pub job 52072

3/25 6:13 PM
Search for "ga buckhead"
Visit pub job 52072

Declaration of Mike Beams_New Draft Final

Final Audit Report

2020-06-25

Created:	2020-06-25
By:	Matthew Davis (matthew.davis@n2pub.com)
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Transaction ID:	CBJCHBCAABAA-khwKd1FBbTQdo3xVS1c-VYuYtbPg8Yv

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